

Senate Engrossed House Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

CHAPTER 267

## **HOUSE BILL 2530**

AN ACT

AMENDING SECTIONS 32-1201, 32-1202, 32-1213 AND 32-1261, ARIZONA REVISED  
STATUTES; RELATING TO THE STATE BOARD OF DENTAL EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1201, Arizona Revised Statutes, is amended to  
3 read:

4 32-1201. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Auxiliary personnel" means all dental assistants, dental  
7 technicians, dental x-ray technicians and other persons employed by dentists  
8 or firms and businesses providing dental services to dentists.

9 2. "Board" means the state board of dental examiners.

10 3. "Business entity" means a business organization that has an  
11 ownership that includes any persons who are not licensed or certified to  
12 provide dental services in this state, that offers to the public professional  
13 services regulated by the board and that is established pursuant to the laws  
14 of any state or foreign country.

15 4. "Dental assistant" means any person who acts as an assistant to a  
16 dentist or a dental hygienist by rendering personal services to a patient  
17 that involve close proximity to the patient while the patient is under  
18 treatment or observation or undergoing diagnostic procedures.

19 5. "Dental hygienist" means any person licensed and engaged in the  
20 general practice of dental hygiene and all related and associated duties,  
21 including educational, clinical and therapeutic dental hygiene procedures.

22 6. "Dental incompetence" means lacking in sufficient dentistry  
23 knowledge or skills, or both, in that field of dentistry in which the  
24 dentist, denturist or dental hygienist concerned engages, to a degree likely  
25 to endanger the health of that person's patients.

26 7. "Dental laboratory technician" means any person, other than a  
27 licensed dentist, who, pursuant to a written work order of a dentist,  
28 fabricates artificial teeth, prosthetic appliances or other mechanical and  
29 artificial contrivances designed to correct or alleviate injuries or defects,  
30 both developmental and acquired, disorders or deficiencies of the human oral  
31 cavity, teeth, investing tissues, maxilla or mandible or adjacent associated  
32 structures.

33 8. "Dental x-ray laboratory technician" means any person, other than a  
34 licensed dentist, who, pursuant to a written work order of a dentist,  
35 performs dental and maxillofacial radiography, including cephalometrics,  
36 panoramic and maxillofacial tomography and other dental related  
37 non-fluoroscopic diagnostic imaging modalities.

38 9. "Dentistry", "dentist" and "dental" means the general practice of  
39 dentistry and all specialties or restricted practices of dentistry.

40 10. "Denturist" means a person practicing denture technology pursuant  
41 to article 5 of this chapter.

42 11. "Disciplinary action" means regulatory sanctions that are imposed  
43 by the board in combination with, or as an alternative to, revocation or  
44 suspension of a license and that may include:

1 (a) Imposition of an administrative penalty in an amount not to exceed  
2 two thousand dollars for each violation of this chapter or rules adopted  
3 under this chapter.

4 (b) Imposition of restrictions on the scope of practice.

5 (c) Imposition of peer review and professional education requirements.

6 (d) Imposition of censure or probation requirements best adapted to  
7 protect the public welfare, which may include a requirement for restitution  
8 to the patient resulting from violations of this chapter or rules adopted  
9 under this chapter.

10 12. "Irregularities in billing" means submitting any claim, bill or  
11 government assistance claim to any patient, responsible party or third-party  
12 payor for dental services rendered that is materially false with the intent  
13 to receive unearned income and as evidenced by any of the following:

14 (a) Charges for services not rendered.

15 (b) Any treatment date that does not accurately reflect the date when  
16 the service and procedures were actually completed.

17 (c) Any description of a dental service or procedure that does not  
18 accurately reflect the actual work completed.

19 (d) Any charge for a service or procedure that cannot be clinically  
20 justified or determined to be necessary.

21 (e) Any statement that is material to the claim and that the licensee  
22 knows is false or misleading.

23 (f) An abrogation of the copayment provisions of a dental insurance  
24 contract by a waiver of all or a part of the copayment from the patient if  
25 this results in an excessive or fraudulent charge to a third party or if the  
26 waiver is used as an enticement to receive dental services from that  
27 provider. This subdivision does not interfere with a contractual  
28 relationship between a third-party payor and a licensee or business entity  
29 registered with the board.

30 (g) Any other practice in billing that results in excessive or  
31 fraudulent charges to the patient.

32 13. "Letter of concern" means an advisory letter to notify a licensee  
33 or a registered business entity that, while the evidence does not warrant  
34 disciplinary action, the board believes that the licensee or registered  
35 business entity should modify or eliminate certain practices and that  
36 continuation of the activities that led to the information being submitted to  
37 the board may result in board action against the practitioner's license or  
38 the business entity's registration. A letter of concern is not a  
39 disciplinary action. A letter of concern is a public document and may be  
40 used in a future disciplinary action.

41 14. "Licensed" means licensed pursuant to this chapter.

42 15. "Place of practice" means each physical location at which a person  
43 licensed pursuant to this chapter performs services subject to this chapter.

1       16. "Primary mailing address" means the address on file with the board  
2 and to which official board correspondence, notices or documents are  
3 delivered in a manner determined by the board.

4       17. "Recognized dental hygiene school" means a school that has a dental  
5 hygiene program with a minimum two academic year curriculum, or the  
6 equivalent of four semesters, and that is approved by the board and  
7 accredited by the American dental association commission on dental  
8 accreditation.

9       18. "Recognized dental school" means a dental school accredited by the  
10 American dental association commission on dental accreditation.

11       19. "Recognized denturist school" means a denturist school that  
12 maintains standards of entrance, study and graduation and that is accredited  
13 by the United States department of education or the council on higher  
14 education accreditation.

15       20. "Supervised personnel" means all dental hygienists, dental  
16 assistants, dental laboratory technicians, denturists, dental x-ray  
17 laboratory technicians and other persons supervised by licensed dentists.

18       21. "Unprofessional conduct" means the following acts, whether  
19 occurring in this state or elsewhere:

20       (a) Intentional betrayal of a professional confidence or intentional  
21 violation of a privileged communication except as either of these may  
22 otherwise be required by law. This subdivision does not prevent members of  
23 the board from the full and free exchange of information with the licensing  
24 and disciplinary boards of other states, territories or districts of the  
25 United States or foreign countries, with the Arizona state dental association  
26 or any of its component societies or with the dental societies of other  
27 states, counties, districts, territories or foreign countries.

28       (b) Using controlled substances as defined in section 36-2501,  
29 narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401,  
30 or hypnotic drugs, including acetylurea derivatives, barbituric acid  
31 derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane  
32 derivatives or any compounds, mixtures or preparations that may be used for  
33 producing hypnotic effects, or alcohol to the extent that it affects the  
34 ability of the dentist, denturist or dental hygienist to practice that  
35 person's profession.

36       (c) Prescribing, dispensing or using drugs for other than accepted  
37 dental therapeutic purposes or for other than medically indicated supportive  
38 therapy in conjunction with managing a patient's dental needs.

39       (d) Gross malpractice, or repeated acts constituting malpractice.

40       (e) Acting or assuming to act as a member of the board if this is not  
41 true.

42       (f) Procuring or attempting to procure a certificate of the national  
43 board of dental examiners or a license to practice dentistry or dental  
44 hygiene by fraud or misrepresentation or by knowingly taking advantage of the  
45 mistake of another.

1 (g) Having professional connection with or lending one's name to an  
2 illegal practitioner of dentistry or any of the other healing arts.

3 (h) Representing that a manifestly not correctable condition, disease,  
4 injury, ailment or infirmity can be permanently corrected, or that a  
5 correctable condition, disease, injury, ailment or infirmity can be corrected  
6 within a stated time, if this is not true.

7 (i) Offering, undertaking or agreeing to correct, cure or treat a  
8 condition, disease, injury, ailment or infirmity by a secret means, method,  
9 device or instrumentality.

10 (j) Refusing to divulge to the board, on reasonable notice and demand,  
11 the means, method, device or instrumentality used in the treatment of a  
12 condition, disease, injury, ailment or infirmity.

13 ~~(k) Giving or receiving, or aiding or abetting the giving or~~  
14 ~~receiving, of rebates, either directly or indirectly.~~

15 (k) DIVIDING A PROFESSIONAL FEE OR RECEIVING ANY CONSIDERATION FOR  
16 PATIENT REFERRALS AMONG OR BETWEEN DENTAL CARE PROVIDERS OR DENTAL CARE  
17 INSTITUTIONS OR ENTITIES. THIS SUBDIVISION DOES NOT PROHIBIT THE DIVISION OF  
18 FEES AMONG LICENSEES WHO ARE ENGAGED IN A BONA FIDE EMPLOYMENT, PARTNERSHIP,  
19 CORPORATE OR CONTRACTUAL RELATIONSHIP FOR THE DELIVERY OF PROFESSIONAL  
20 SERVICES.

21 (l) Knowingly making any false or fraudulent statement, written or  
22 oral, in connection with the practice of dentistry.

23 (m) Refusal, revocation or suspension of a license or any other  
24 disciplinary action taken against a dentist by, or the voluntary surrender of  
25 a license in lieu of disciplinary action to, any other state, territory,  
26 district or country, unless the board finds that this action was not taken  
27 for reasons that relate to the person's ability to safely and skillfully  
28 practice dentistry or to any act of unprofessional conduct.

29 (n) Any conduct or practice that constitutes a danger to the health,  
30 welfare or safety of the patient or the public.

31 (o) Obtaining a fee by fraud or misrepresentation, or wilfully or  
32 intentionally filing a fraudulent claim with a third party for services  
33 rendered or to be rendered to a patient.

34 (p) Repeated irregularities in billing.

35 (q) Employing unlicensed persons to perform or aiding and abetting  
36 unlicensed persons in the performance of work that can be done legally only  
37 by licensed persons.

38 (r) Practicing dentistry under a false or assumed name in this state,  
39 other than as allowed by section 32-1262.

40 (s) Wilfully or intentionally causing or permitting supervised  
41 personnel or auxiliary personnel operating under the licensee's supervision  
42 to commit illegal acts or perform an act or operation other than that  
43 permitted under article 4 of this chapter and rules adopted by the board  
44 pursuant to section 32-1282.

45 (t) The following advertising practices:

1 (i) The publication or circulation, directly or indirectly, of any  
2 false, fraudulent or misleading statements concerning the skill, methods or  
3 practices of the licensee or of any other person.

4 (ii) Advertising in any manner that tends to deceive or defraud the  
5 public.

6 (u) Failing to dispense drugs and devices in compliance with article 6  
7 of this chapter.

8 (v) Failing to comply with a final board order, including an order of  
9 censure or probation.

10 (w) Failing to comply with a board subpoena in a timely manner.

11 (x) Failing or refusing to maintain adequate patient records.

12 (y) Failing to allow properly authorized board personnel, on demand,  
13 to inspect the place of practice and examine and have access to documents,  
14 books, reports and records maintained by the licensee or certificate holder  
15 that relate to the dental practice or dentally related activity.

16 (z) Refusing to submit to a body fluid examination as required through  
17 a monitored treatment program or pursuant to a board investigation into a  
18 licensee's or certificate holder's alleged substance abuse.

19 (aa) Failing to inform a patient of the type of material the dentist  
20 will use in the patient's dental filling and the reason why the dentist is  
21 using that particular filling.

22 (bb) Failing to report in writing to the board any evidence that a  
23 dentist, denturist or dental hygienist is or may be:

24 (i) Professionally incompetent.

25 (ii) Engaging in unprofessional conduct.

26 (iii) Impaired by drugs or alcohol.

27 (iv) Mentally or physically unable to safely engage in the activities  
28 of a dentist, denturist or dental hygienist pursuant to this chapter.

29 (cc) Filing a false report pursuant to subdivision (bb) of this  
30 paragraph.

31 (dd) Practicing dentistry, dental hygiene or denturism in a business  
32 entity that is not registered with the board as required by section 32-1213.

33 Sec. 2. Section 32-1202, Arizona Revised Statutes, is amended to read:

34 32-1202. Scope of practice; practice of dentistry

35 A. FOR THE PURPOSES OF THIS CHAPTER, the practice of dentistry is the  
36 ~~evaluation, diagnosis, prevention and treatment of human diseases, disorders~~  
37 ~~and conditions of the oral cavity, the maxillofacial area and the adjacent~~  
38 ~~and associated structures within the dentist's scope of education, training~~  
39 ~~and experience and according to the ethics of the profession and applicable~~  
40 ~~law~~ SURGICAL OR NONSURGICAL TREATMENT AND PERFORMANCE OF RELATED ADJUNCTIVE  
41 PROCEDURES FOR ANY DISEASE, PAIN, DEFORMITY, DEFICIENCY, INJURY OR PHYSICAL  
42 CONDITION OF THE HUMAN TOOTH OR TEETH, ALVEOLAR PROCESS, GUMS, LIPS, CHEEK,  
43 JAWS, ORAL CAVITY AND ASSOCIATED TISSUES, INCLUDING THE REMOVAL OF STAINS,  
44 DISCOLORATIONS AND CONCRETIONS.

1       ~~B. For the purposes of this section, "treatment" includes surgical and~~  
2       ~~nonsurgical treatment and related procedures.~~

3       Sec. 3. Section 32-1213, Arizona Revised Statutes, is amended to read:

4       32-1213. Business entities; registration; renewal; civil  
5       penalty; exceptions

6       A. A business entity may not offer dental services pursuant to this  
7       chapter unless:

8       1. The entity is registered with the board pursuant to this section.

9       2. The services are conducted by a licensee pursuant to this chapter.

10      B. The business entity must file a registration application on a form  
11      provided by the board. The application must include:

12      1. A description of the entity's services offered to the public.

13      2. The name of any dentist who is authorized to provide and who is  
14      responsible for providing the dental services offered at each office.

15      3. The names and addresses of the officers and directors of the  
16      business entity.

17      4. A registration fee prescribed by the board in rule.

18      C. A business entity must file a separate registration application and  
19      pay a fee for each branch office in this state.

20      D. A registration expires three years after the date the board issues  
21      the registration. A business entity that wishes to renew a registration must  
22      submit an application for renewal as prescribed by the board on a triennial  
23      basis on a form provided by the board before the expiration date. An entity  
24      that fails to renew the registration before the expiration date is subject to  
25      a late fee as prescribed by the board by rule. The board may stagger the  
26      dates for renewal applications.

27      E. The business entity must notify the board in writing within thirty  
28      days after any change:

29      1. In the entity's name, address or telephone number.

30      2. In the officers or directors of the business entity.

31      3. In the name of any dentist who is authorized to provide and who is  
32      responsible for providing the dental services in any facility.

33      F. The business entity shall establish a written protocol for the  
34      secure storage, transfer and access of the dental records of the business  
35      entity's patients. This protocol must include, at a minimum, procedures for:

36      1. Notifying patients of the future locations of their records if the  
37      business entity terminates or sells the practice.

38      2. Disposing of unclaimed dental records.

39      3. The timely response to requests by patients for copies of their  
40      records.

41      G. The business entity must notify the board within thirty days after  
42      the dissolution of any registered business entity or the closing or  
43      relocation of any facility and must disclose to the board the entity's  
44      procedure by which its patients may obtain their records.

1           H. The board may do any of the following pursuant to its disciplinary  
2 procedures if an entity violates the board's statutes or rules:

3           1. Refuse to issue a registration.  
4           2. Suspend or revoke a registration.  
5           3. Impose a civil penalty of not more than two thousand dollars for  
6 each violation.

7           4. Enter a decree of censure.

8           5. Issue an order prescribing a period and terms of probation that are  
9 best adapted to protect the public welfare and that may include a requirement  
10 for restitution to a patient for a violation of this chapter or rules adopted  
11 pursuant to this chapter.

12          6. Issue a letter of concern if a business entity's actions may cause  
13 the board to take disciplinary action.

14          I. The board shall deposit, pursuant to sections 35-146 and 35-147,  
15 civil penalties collected pursuant to this section in the state general fund.

16          J. This section does not apply to:

17          1. A sole proprietorship or partnership that consists exclusively of  
18 persons who are licensed pursuant to this chapter.

19          2. Any of the following entities licensed under title 20:

20           (a) A service corporation.

21           (b) An insurer authorized to transact disability insurance.

22           (c) A prepaid dental plan organization that does not provide directly  
23 for prepaid dental services.

24           (d) A health care services organization that does not provide directly  
25 for dental services.

26          3. A professional corporation or professional limited liability  
27 company, the shares of which are exclusively owned by persons who are  
28 licensed pursuant to this chapter and that is formed to engage in the  
29 practice of dentistry pursuant to title 10, chapter 20 or title 29, chapter  
30 4, article 11.

31          4. A facility regulated by the federal government or a state, district  
32 or territory of the United States.

33          5. An administrator or executor of the estate of a deceased dentist or  
34 a person who is legally authorized to act for a dentist who has been  
35 adjudicated to be mentally incompetent for not more than one year from the  
36 date the board receives notice of the dentist's death or incapacitation  
37 pursuant to section 32-1270.

38          K. A facility that offers dental services to the public by persons  
39 licensed under this chapter shall be licensed by the board unless the  
40 facility is any of the following:

41           1. Owned by a licensee.

42           2. Regulated by the federal government or a state, district or  
43 territory of the United States.



1 L. Except for issues relating to insurance coding and billing that  
2 require the name, signature and license number of the dentist providing  
3 treatment, this section does not:

4 1. Authorize a licensee in the course of providing dental services for  
5 an entity registered pursuant to this section to disregard or interfere with  
6 a policy or practice established by the entity for the operation and  
7 management of the business.

8 2. Authorize an entity registered pursuant to this section to  
9 establish or enforce a business policy or practice that may interfere with  
10 the professional judgment of the licensee in providing dental services for  
11 the entity or may compromise a licensee's ability to comply with this  
12 chapter.

13 M. The board shall adopt rules that provide a method for the board to  
14 receive the assistance and advice of business entities licensed pursuant to  
15 this chapter in all matters relating to the regulation of business entities.

16 N. NO INDIVIDUAL CURRENTLY HOLDING A SURRENDERED OR REVOKED LICENSE TO  
17 PRACTICE DENTISTRY OR DENTAL HYGIENE IN ANY STATE OR JURISDICTION IN THE  
18 UNITED STATES MAY HAVE A MAJORITY OWNERSHIP INTEREST IN THE BUSINESS ENTITY  
19 REGISTERED PURSUANT TO THIS SUBSECTION. REVOCATION AND SURRENDER OF  
20 LICENSURE SHALL BE LIMITED TO DISCIPLINARY ACTIONS RESULTING IN LOSS OF  
21 LICENSE OR SURRENDER OF LICENSE INSTEAD OF DISCIPLINARY ACTION. ANY DENTIST  
22 OR DENTAL HYGIENIST AFFECTED BY THIS SUBSECTION SHALL HAVE ONE YEAR FROM THE  
23 SURRENDER OR REVOCATION TO DIVEST THEMSELVES OF THEIR OWNERSHIP INTEREST.  
24 THIS SUBSECTION DOES NOT APPLY TO PUBLICLY HELD COMPANIES. FOR THE PURPOSES  
25 OF THIS SUBSECTION, "MAJORITY OWNERSHIP INTEREST" MEANS AN OWNERSHIP INTEREST  
26 GREATER THAN FIFTY PER CENT.

27 Sec. 4. Section 32-1261, Arizona Revised Statutes, is amended to read:

28 32-1261. Practicing without license; classification

29 Except as otherwise provided a person is guilty of a class 6 felony  
30 who, without a valid license or business entity registration as prescribed by  
31 this chapter:

32 1. Practices dentistry or any branch of dentistry AS DESCRIBED IN  
33 SECTION 32-1202.

34 2. In any manner or by any means, direct or indirect, advertises,  
35 represents or claims to be engaged or ready and willing to engage in that  
36 practice AS DESCRIBED IN SECTION 32-1202.

37 3. Manages, maintains or carries on, in any capacity or by any  
38 arrangement, a practice, business, office or institution for the practice of  
39 dentistry, or that is advertised, represented or held out to the public for  
40 that purpose.

APPROVED BY THE GOVERNOR APRIL 26, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2011.

Passed the House February 28, 2011

Passed the Senate April 12, 2011

by the following vote: 55 Ayes,

by the following vote: 20 Ayes,

3 Nays, 2 Not Voting

2 Nays, 1 Not Voting

[Signature]  
Speaker of the House  
Pro Tempore

[Signature]  
President of the Senate

Cheryl Laube  
Chief Clerk of the House

Chambers Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

           day of           , 20  

at            o'clock            M.

            
Secretary to the Governor

Approved this            day of

at            o'clock            M.

            
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this            day of           , 20  

at            o'clock            M.

            
Secretary of State

H.B. 2530

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 19, 2011,

by the following vote: 53 Ayes,

7 Nays, 0 Not Voting

[Signature]  
Speaker of the House

Cheryl Laube  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20 day of April, 2011,

at 8:30 o'clock A. M.

[Signature]  
Secretary to the Governor

Approved this 26<sup>th</sup> day of

April, 2011,

at 2:35 o'clock P. M.

[Signature]  
Governor of Arizona

H.B. 2530

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 26<sup>th</sup> day of April, 2011,

at 4:57 o'clock P. M.

[Signature]  
Secretary of State